

**For a thriving New England****CLF Massachusetts**

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December 20, 2021

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**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

RE: Notice of Violations and Intent to File Suit Under the Clean Water Act

To Whom It May Concern:

## CONSERVATION LAW FOUNDATION

The Conservation Law Foundation (“CLF”)<sup>1</sup> hereby gives notice to Schnitzer Steel Industries, Inc., Prolerized New England, LLC, Metals Recycling, L.L.C., Joint Venture Operations, Inc., Proleride Transport Systems, Inc., Maine Metal Recycling, Inc., their agents, and directors (collectively, “Schnitzer”) of its intent to file suit pursuant to Section 505 of the Federal Water Pollution Control Act (“Clean Water Act,” “CWA,” or “Act”), 33 U.S.C. § 1365(a), for violations of the Act specified below. This letter constitutes notice pursuant to 40 C.F.R., Part 135 (the “Notice”) to the addressed persons of CLF’s intention to file suit in the United States District Court of the District of Massachusetts seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this Notice letter.

The subject of this action is Schnitzer’s failure to comply with the 2015 and 2021 Multi-Sector General Permits<sup>2</sup> (the “2015 MSGP” and the “2021 MSGP,” collectively, the “MSGPs”). Schnitzer has discharged, and continues to discharge, stormwater from ten facilities in Massachusetts, New Hampshire, and Puerto Rico while violating the terms of the MSGPs in four ways. First, Schnitzer has failed to take required corrective action after exceeding annual average benchmarks for pollutants including heavy metals, organic pollutants, and solids; exceeding water quality standards; observing visual evidence of stormwater pollution; and facility inspections indicating inadequate discharge control.<sup>3</sup> Second, Schnitzer has failed to follow required procedures for minimizing pollutant discharges.<sup>4</sup> Third, Schnitzer has contributed to the impairment of its receiving waters and has violated provisions relating to water quality standards.<sup>5</sup> Finally, Schnitzer has failed to comply with benchmark and impairment monitoring and reporting requirements.<sup>6</sup>

### **LOCATION OF THE ALLEGED VIOLATIONS**

The violations alleged in this Notice Letter have occurred and continue to occur at the following Schnitzer facilities (collectively, the “Facilities”):

1. Schnitzer Northeast – Attleboro, located at 136 Bacon Street in Attleboro, Massachusetts 02703 (the “Attleboro Facility”);
2. Schnitzer Northeast, located at 69 Rover Street in Everett, Massachusetts 02149 (the “Everett Facility”);

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<sup>1</sup> CLF is a not-for-profit 501(C)(3) organization dedicated to the conservation and protection of New England’s environment. Its mission includes the conservation and protection of New England’s waters for, among other things, fishing, recreation, boating, scenic/aesthetic, and scientific purposes. The interests of CLF’s members are adversely affected by Schnitzer’s discharges of stormwater pollution to the receiving waters in violation of the Clean Water Act.

<sup>2</sup> EPA, MULTI-SECTOR GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY (MSGP) (effective June 4, 2015), [https://www.epa.gov/sites/default/files/2015-10/documents/msgp2015\\_finalpermit.pdf](https://www.epa.gov/sites/default/files/2015-10/documents/msgp2015_finalpermit.pdf) [hereinafter 2015 MSGP]; EPA, MULTI-SECTOR GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY [hereinafter 2021 MSGP] (effective Mar. 1, 2021), <https://www.epa.gov/npdes/stormwater-discharges-industrial-activities-epas-2021-msgp> [hereinafter 2021 MSGP]. These MSGPs are pursuant to Sections 402(p)(3)(A) and 402(p)(4)(A) of the Clean Water Act (“CWA”) and 40 C.F.R. § 122.26(c)(1).

<sup>3</sup> *Infra* at 7-8, 11-13.

<sup>4</sup> *Infra* at 8-9, 13-14.

<sup>5</sup> *Infra* at 9-10; 14.

<sup>6</sup> *Infra* at 14-15.

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3. Schnitzer Northeast, located at 20 Nippnapp Trail in Worcester, Massachusetts 01607 (the “Worcester Facility”);
4. Schnitzer Northeast Poplar Avenue Facility, located at 14 Poplar Avenue in Concord New Hampshire 03301 (the “Concord-Poplar Facility”);
5. Schnitzer Northeast Sandquist Street Facility, located at 25 Sandquist Street in Concord, New Hampshire 03301 (the “Concord-Sandquist Facility”);
6. Schnitzer Northeast Allard Drive Facility, located at 200 Allard Drive in Manchester, New Hampshire 03103 (the “Manchester Facility”);
7. Schnitzer Puerto Rico, Inc. – Bayamón, located at Road #2 KM 7.7, Corujo Industrial Park in Bayamón, Puerto Rico 00960 (the “Bayamón Facility”);
8. Schnitzer Puerto Rico, Inc. – Caguas, located at Road PR-1 KM 30.0 INT., in Caguas, Puerto Rico 00726 (the “Caguas Facility”);
9. Schnitzer Puerto Rico, Inc. – Canovanas, located at Lot 61, Road PR-188, San Isidro Industrial Park in Canovanas, Puerto Rico 00729 (the “Canovanas Facility”); and
10. Schnitzer Puerto Rico, Inc. – Port of Ponce Processed Material Staging Area, located at Road PR-123 Final in Ponce, Puerto Rico 00731 (the “Ponce Facility”).

**PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS**

Schnitzer Steel Industries, Inc. (“Schnitzer”) and its subsidiaries Prolerized New England, LLC (“Prolerized”), Metals Recycling, L.L.C. (“Metals Recycling”), Joint Venture Operations, Inc. (“Joint Venture”), Proleride Transport Systems, Inc. (“Proleride”), Maine Metal Recycling, Inc. (“Maine Metal”), and Schnitzer Puerto Rico, Inc. (“Schnitzer Puerto Rico”) are persons as defined by 33 U.S.C. § 1362(5).

Schnitzer Steel, its subsidiary Prolerized, and Prolerized’s managers (Joint Venture, Proleride, and Maine Metal) operate the Attleboro Facility and the Everett Facility and have operated them since at least 2016. Schnitzer Steel, its subsidiary Metals Recycling, and Metals Recycling’s manager (Joint Venture) operate the Worcester Facility and have operated it since at least 2016. Schnitzer Steel, its subsidiary Prolerized doing business as Schnitzer Northeast, and Prolerized’s managers (Joint Venture, Proleride, and Maine Metal) operate the Concord-Poplar Facility, the Concord-Sandquist Facility, and the Manchester Facilities and have operated them since at least 2016. Schnitzer Steel and its subsidiary Schnitzer Puerto Rico operate the Bayamón Facility, the Caguas Facility, the Canovanas Facility, and the Ponce Facility, and have operated them since at least 2016.

**BACKGROUND**

Schnitzer acquires and processes raw scrap metal for sale to steel mills and foundries.<sup>7</sup> The Schnitzer Facilities discharge stormwater pursuant to the MSGPs issued by the United States Environmental Protection Agency (“EPA”). The Facilities’ stormwater discharges from June 4, 2015 until March 1, 2021 were permitted by the 2015 MSGP. The Facilities’ stormwater discharge from March 1, 2021 until the present are permitted by the 2021 MSGP.

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<sup>7</sup> *Schnitzer Home Page*, <https://www.schnitzersteel.com>.

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**A. Schnitzer discharges pollutants that are dangerous to human health and aquatic ecosystems.**

Each day of precipitation, the Facilities discharge stormwater runoff, which carries pollutants, including aluminum, copper, iron, lead, zinc, and total suspended solids (“TSS”), into waters of the United States.

Heavy metals like aluminum, copper, iron, lead, and zinc are toxic, endanger human and animal health, and imperil aquatic ecosystems. Exposure to heavy metals in drinking water can cause serious health issues.<sup>8</sup> Lead, in particular, is highly toxic even at low exposure levels.<sup>9</sup> Some heavy metals, including aluminum and zinc, bioaccumulate throughout the food chain, endangering predator species.<sup>10</sup> Iron in drinking water increases water cloudiness or turbidity,<sup>11</sup> and when present in drinking water, can lead to bad taste, clogged pipes, and stains.<sup>12</sup>

Total suspended solids (“TSS”) is a measurement of the amount of organic and inorganic particles in the water.<sup>13</sup> Elevated TSS levels increase water turbidity (cloudiness) and reduce the light available to desirable aquatic plants.<sup>14</sup> Solids that settle out as bottom deposits can alter or destroy habitat for fish and other bottom-dwelling organisms.<sup>15</sup>

The Facilities’ stormwater runoff also increases chemical oxygen demand (“COD”), an indicator for the presence of organic pollution.<sup>16</sup>

<sup>8</sup> See, e.g., AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY (“ATSDR”), TOXICOLOGICAL PROFILE (“TOX. PROF.”) FOR ALUMINUM 5, (U.S. Department of Health and Human Services, Public Health Service 2008 (“HHS”)), <https://www.atsdr.cdc.gov/ToxProfiles/tp22.pdf>; ATSDR, TOX. PROF. FOR COPPER 6-7 (HHS 2004), <https://www.atsdr.cdc.gov/ToxProfiles/tp132.pdf>; ATSDR, TOX. PROF. FOR LEAD 3-8 (HHS 2020), <https://www.atsdr.cdc.gov/ToxProfiles/tp13.pdf>; ATSDR, TOX. PROF. FOR ZINC 4-6 (HHS 2005), <https://www.atsdr.cdc.gov/ToxProfiles/tp60.pdf>.

<sup>9</sup> ATSDR, TOX. PROF. FOR LEAD 3-9 (HHS 2020), <https://www.atsdr.cdc.gov/toxprofiles/tp13.pdf>.

<sup>10</sup> B.O. Rosseland Et. Al., *Environmental Effects Of Aluminium*, 12 ENVIRON GEOCHEM HEALTH 17–27 (1990), <https://doi.org/10.1007/BF01734045>; ATSDR, TOX. PROF. FOR ZINC 184 (HHS 2005), <https://www.atsdr.cdc.gov/ToxProfiles/tp60.pdf>.

<sup>11</sup> Pete Cadmus et. al., *Chronic Toxicity of Ferric Iron for North American Aquatic Organisms: Derivation of a Chronic Water Quality Criterion Using Single Species and Mesocosm Data*, 74(4) ARCH. ENVIRON. CONTAM. TOXICOL. 605, 611–612 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5893738/>.

<sup>12</sup> EPA, *Secondary Drinking Water Standards: Guidance for Nuisance Chemicals*, <https://www.epa.gov/sdwa/secondary-drinking-water-standards-guidance-nuisance-chemicals#table-of-secondary>.

<sup>13</sup> Minn. Pollution Control Agency, *Total Suspended Solids (TSS) in stormwater*, Minn. Storm Water Manual (2021), [https://stormwater.pca.state.mn.us/index.php/Total\\_Suspended\\_Solids\\_\(TSS\)\\_in\\_stormwater](https://stormwater.pca.state.mn.us/index.php/Total_Suspended_Solids_(TSS)_in_stormwater).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> EPA, *Chemical Oxygen Demand*, Substance Registry Service, [https://sor.epa.gov/sor\\_internet/registry/substreg/searchandretrieve/advancedsearch/search.do?details=displayDetails&selectedSubstanceId=79522](https://sor.epa.gov/sor_internet/registry/substreg/searchandretrieve/advancedsearch/search.do?details=displayDetails&selectedSubstanceId=79522).

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**B. Schnitzer is discharging pollutants into waters of the United States that are already impaired.**

The Blackstone River is a water of the United States designated as a Class B waterbody in Rhode Island and Massachusetts.<sup>17</sup>

The Attleboro Facility discharges into the Blackstone River at waterbody segment RI0001003R-01B.<sup>18</sup> This segment was listed as impaired on the 2020 303(d) list for all its designated uses, including impairment to fish and wildlife habitat from metals including iron and lead.<sup>19</sup> The sources of impairment for this segment of the Blackstone River include urban runoff.<sup>20</sup>

The Worcester Facility discharges into the Blackstone River at waterbody segment MA51-03.<sup>21</sup> This segment was listed as impaired on the 2016 303(d) list for aesthetic use, primary contact recreation, and secondary contact recreation for impairments including debris, odor, oil and grease, scum/foam, trash, and turbidity.<sup>22</sup> It is impaired for fish, other aquatic life, and wildlife from chronic aquatic toxicity, dissolved oxygen, fish bioassessments, lead, eutrophication indicators, and sedimentation/siltation.<sup>23</sup> The sources of impairment for this segment of the Blackstone River include unspecified urban stormwater and wet weather discharges (including stormwater discharges).<sup>24</sup>

The Mystic River is a water of the United States and is designated as a Class B waterbody.<sup>25</sup> The Everett Facility discharges to the Mystic River at waterbody segment MA71-03.<sup>26</sup> This segment is impaired on the 2016 303(d) list for all of its designated uses, including aesthetic use and primary and secondary contact recreation for pollutants including odor, oil and grease, and scum/foam; and it is impaired for fish, other aquatic life, and wildlife from dissolved oxygen,

<sup>17</sup> RHODE ISLAND DEP'T OF ENVTL. MGMT. ("RIDEM"), TMDL ANALYSIS FOR BLACKSTONE RIVER WATERSHED 16 (2013), <http://www.dem.ri.gov/programs/benviron/water/quality/rest/pdfs/blackstn.pdf>; MASS. DEP'T ENVTL. PROT., APP. 6: BLACKSTONE RIVER WATERSHED ASSESSMENT AND LISTING DECISION SUMM., 19 (Draft, 2018-2020), <https://www.mass.gov/doc/20182020-draft-integrated-list-of-waters-appendix-6-blackstone-river-watershed-assessment-and-listing-decision-summary/download>.

<sup>18</sup> EPA, *Detailed Facility Report for Schnitzer Northeast – Attleboro (110061143926)*, ECHO Enforcement and Compliance History Online ("ECHO"), <https://echo.epa.gov/detailed-facility-report?fid=110061143926>.

<sup>19</sup> RIDEM, 2018-2020 IMPAIRED WATERS REPORT, 24, 38 (2021), <http://dem.ri.gov/programs/benviron/water/quality/pdf/iwr1820.pdf>.

<sup>20</sup> EPA, *2020 Waterbody Report for Blackstone River (RI0001003R-01B)*, How's My Waterway, <https://mywaterway.epa.gov/waterbody-report/RIDEM/RI0001003R-01B/2020>.

<sup>21</sup> EPA, *Detailed Facility Report for Metals Recycling LLC (110046471233)*, ECHO, <https://echo.epa.gov/detailed-facility-report?fid=110046471233>.

<sup>22</sup> MASS. DIV. OF WATERSHED MGMT., MASS. YEAR 2016 INTEGRATED LIST OF WATERS, 156, 241(2020), <https://www.epa.gov/sites/default/files/2020-01/documents/2016-ma-303d-list-report.pdf>.

<sup>23</sup> EPA, *2020 Waterbody Report for Blackstone River (MA51-03)*, How's My Waterway, [https://mywaterway.epa.gov/waterbody-report/MA\\_DEP/MA51-03/2016](https://mywaterway.epa.gov/waterbody-report/MA_DEP/MA51-03/2016).

<sup>24</sup> *Id.*

<sup>25</sup> MASS DEP'T. CONSERVATION AND RECREATION, MYSTIC RIVER MASTER PLAN 9 (2009), <https://www.mass.gov/doc/mystic-river-master-plan-0/download>.

<sup>26</sup> EPA, *Detailed Facility Report for Schnitzer Northeast (110043216418)*, ECHO, <https://echo.epa.gov/detailed-facility-report?fid=110043216418>; EPA, *2020 Waterbody Report for Mystic River (MA71-03)*, How's My Waterway, [https://mywaterway.epa.gov/waterbody-report/MA\\_DEP/MA71-03/2016](https://mywaterway.epa.gov/waterbody-report/MA_DEP/MA71-03/2016).

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petroleum hydrocarbons, and unknown causes.<sup>27</sup> The sources of impairment for this segment of the Mystic River include contaminated sediments and unknown sources.<sup>28</sup>

The Merrimack River is a water of the United States and is designated as a Class SB waterbody.<sup>29</sup> The Merrimack River is a source of drinking water for many communities in the greater Nashua, New Hampshire area.<sup>30</sup> Both the Concord-Poplar Facility and the Concord-Sandquist Facility discharge to the Merrimack River at waterbody segment NHIMP700060302-07.<sup>31</sup> The Manchester Facility discharges to the Merrimack River at waterbody segment NHRIV700060803-14-02.<sup>32</sup> This segment is listed as impaired on the 2018 303(d) list for designated uses including aquatic life from aluminum and pH.<sup>33</sup>

The Bayamón Facility discharges to Río Hondo at waterbody segment PRER11A.<sup>34</sup> The Río Hondo is a water of the United States, a Class SD waterbody, and a tributary of Río de Bayamón, which flows into the San Juan Bay and the Atlantic Ocean.<sup>35</sup> Río Hondo is listed in the 2020 303(d) list as impaired including for aquatic life due to DO and surfactants.<sup>36</sup> Probable sources of impairment include urban runoff.<sup>37</sup>

The Caguas Facility discharges to a tributary creek that flows into Río Bairoa (PRER14H).<sup>38</sup> The tributary creek is a water of the United States. The Río Bairoa is a Class SD waterbody and a tributary to the Río Grande de Loíza, which drains into the Atlantic Ocean.<sup>39</sup> Río Bairoa is used for aquatic life, drinking water supply, and primary and secondary contact recreation.<sup>40</sup> It was listed as impaired on the 2020 303(d) list for all its uses, including for aquatic life from

<sup>27</sup> MASS. DIV. OF WATERSHED MGMT. *supra* note 22 at 155, 235.

<sup>28</sup> 2020 Waterbody Report for Mystic River (MA71-03) *supra* note 26.

<sup>29</sup> Mass. Exec. Office of Env'tl. Affairs, MERRIMACK RIVER: A COMPREHENSIVE WATERSHED ASSESS. REPORT, 1 (2001), <https://www.mass.gov/files/2017-07/Merrimack%20River%20Watershed%20Assessment%20Report.pdf>.

<sup>30</sup> EPA, *About the Merrimack* (last updated Sept. 23, 2021), <https://www.epa.gov/merrimackriver/about-merrimack#B>.

<sup>31</sup> EPA, *Detailed Facility Report for Schnitzer Northeast Poplar Ave. Fac. (110064870304)*, ECHO, <https://echo.epa.gov/detailed-facility-report?fid=110064870304>; See EPA, *Detailed Facility Report for Schnitzer Northeast Sandquist St. Fac. (110064873196)*, ECHO, <https://echo.epa.gov/detailed-facility-report?fid=110064873196>.

<sup>32</sup> EPA, *Detailed Facility Report Schnitzer Northeast Allard Drive Facility (110064864446)*, ECHO, <https://echo.epa.gov/detailed-facility-report?fid=110064864446>.

<sup>33</sup> EPA, 2018 NH 303(D) LIST REPORT, 5 (2021), <https://www.epa.gov/sites/default/files/2020-10/documents/2018-nh-303d-list.pdf>.

<sup>34</sup> EPA, *Detailed Facility Report for Schnitzer Puerto Rico, Inc. – Bayamon (110064859719)*, ECHO, <https://echo.epa.gov/detailed-facility-report?fid=110064859719>.

<sup>35</sup> P.R. WATER QUALITY STANDARDS (“WQS”) REG. 9079 § 1303.2 <https://www.epa.gov/sites/default/files/2014-12/documents/prwqs.pdf>; EPA, 2014 Waterbody Report for Merrimack River (NHRIV700060803-14-02), How's My Waterway, <https://mywaterway.epa.gov/waterbody-report/11113300/NHRIV700060803-14-02>.

<sup>36</sup> EPA, PUERTO RICO 2020 305(B) AND 303(D) INTEGRATED REPORT, 187 (2020), [https://www.epa.gov/sites/default/files/2021-01/documents/puerto\\_rico\\_2020\\_303d\\_list.pdf](https://www.epa.gov/sites/default/files/2021-01/documents/puerto_rico_2020_303d_list.pdf).

<sup>37</sup> EPA, 2020 Waterbody Report for Río Hondo (PRER11A), How's My Waterway, [https://mywaterway.epa.gov/waterbody-report/PR\\_LAKES/PRER11A/2020](https://mywaterway.epa.gov/waterbody-report/PR_LAKES/PRER11A/2020).

<sup>38</sup> EPA, *Detailed Facility Report for Schnitzer Puerto Rico, Inc. – Caguas (110064865506)*, ECHO, <https://echo.epa.gov/detailed-facility-report?fid=110064865506>.

<sup>39</sup> EPA, 2020 Waterbody Report for Río Hondo *supra* note 37.

<sup>40</sup> P.R. WQS REG. 9079 § 1303.2; see EPA, 2020 Waterbody Report for Río Bairoa Assessment (PRER14H), How's My Waterway, [https://mywaterway.epa.gov/waterbody-report/PR\\_LAKES/PRER14H/2020](https://mywaterway.epa.gov/waterbody-report/PR_LAKES/PRER14H/2020).



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pollutants including surfactants.<sup>41</sup> Probable sources contributing to its impairment include industrial point source discharge and urban runoff.<sup>42</sup>

The Canovanas Facility discharges into an unnamed creek within the coastal watershed between Río Sabana and Río Grande de Loiza.<sup>43</sup> The unnamed creek is a Class SB waterbody and a water of the United States.<sup>44</sup> The Río Grande de Loiza Estuary is identified as waterbody PREE14A.<sup>45</sup>

The Ponce Facility discharges into the Caribbean Sea in the coastal waterbody classified as “Punta Carenero to Punta Cuchara” and identified as waterbody PRSC36C (a Class SB water).<sup>46</sup> The coastal waters between Punta Carenero and Punta Cuchara are listed on the 2020 303(d) list as impaired for all their uses, including for aquatic life due to copper, dissolved oxygen, oil and grease, and turbidity.<sup>47</sup> The EPA lists urban runoff as a probable sources of impairment.<sup>48</sup>

### **STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED**

To discharge lawfully under the Clean Water Act from June 4, 2015 until March 1, 2021, Schnitzer was required to comply with the 2015 MSGP. Since March 1, 2021, Schnitzer has been required to comply with the 2021 MSGP. Both MSGPs require permittees to comply with the following standards and limitations.

#### **A. Schnitzer is required to take corrective actions following certain triggering events.**

The MSGPs require Schnitzer to take corrective action or Additional Implementation Measures (“AIM”) when the following triggering events occur:<sup>49</sup> 1) the average of four quarterly sampling results exceeds the applicable benchmark value or when an exceedance of the four-quarter average is mathematically certain;<sup>50</sup> 2) control measures do not adequately minimize discharges to meet applicable water quality standards;<sup>51</sup> 3) a visual assessment shows evidence of stormwater pollution in the discharge;<sup>52</sup> or 4) a facility inspection reveals that discharges are not adequately controlled.<sup>53</sup>

<sup>41</sup> EPA, PUERTO RICO 2020 305(B) AND 303(D) INTEGRATED REPORT, 190 (2020)

[https://www.epa.gov/sites/default/files/2021-01/documents/puerto\\_rico\\_2020\\_303d\\_list.pdf](https://www.epa.gov/sites/default/files/2021-01/documents/puerto_rico_2020_303d_list.pdf).

<sup>42</sup> 2020 Waterbody Report for Rio Bairoa (PRER14H) *supra* note 40.

<sup>43</sup> EPA, Detailed Facility Report for Schnitzer Puerto Rico, Inc. – Canovanas (110070110724), ECHO <https://echo.epa.gov/detailed-facility-report?fid=110070110724>.

<sup>44</sup> P.R. WQS REG. 9079 § 1303.2.

<sup>45</sup> EPA, 2020 Waterbody Report for Rio Grande De Loiza Estuary (PREE14A), How’s My Waterway, [https://mywaterway.epa.gov/waterbody-report/PR\\_LAKES/PREE14A/2020](https://mywaterway.epa.gov/waterbody-report/PR_LAKES/PREE14A/2020).

<sup>46</sup> EPA, Detailed Facility Report for Schnitzer Puerto Rico, Inc. - Port Of Ponce Processed Material Staging Area (110064856115), ECHO <https://echo.epa.gov/detailed-facility-report?fid=110064856115>

<sup>47</sup> PUERTO RICO 2020 305(B) AND 303(D) INTEGRATED REPORT, *supra* note 41.

<sup>48</sup> EPA, 2020 Waterbody Report for Punta Carenero to Punta Cuchara Assessment Unit ID: PRSC36C, How’s My Waterway, [https://mywaterway.epa.gov/waterbody-report/PR\\_LAKES/PRSC36C/2020](https://mywaterway.epa.gov/waterbody-report/PR_LAKES/PRSC36C/2020).

<sup>49</sup> AIM is a step-wise corrective action procedure triggered by benchmark exceedances in the 2021 MSGP.

<sup>50</sup> 2015 MSGP § 4.2 at 27, § 6.2.1.2 at 42; 2021 MSGP § 4.2.2.3 at 39, § 5.1.1.2 at 45, § 5.2.2 at 47.

<sup>51</sup> 2015 MSGP § 2.1 at 14; 2021 MSGP § 5.1.1.1 at 45 (stormwater control measures are not stringent enough to control stormwater discharges as necessary to ensure receiving water will meet applicable water quality standards).

<sup>52</sup> 2021 MSGP § 3.2.2.5 at 30; § 5.1.1 at 45; 2015 MSGP § 3.2.1 at 24.

<sup>53</sup> 2015 MSGP § 4.1 at 27; 2021 MSGP § 5.1.1 at 45.

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The MSGPs include sector-specific benchmarks for facilities like Schnitzer that fall under Sector N: scrap recycling and waste recycling facilities.<sup>54</sup> The benchmark values in the 2015 MSGP are: 120 mg/L for COD; 100 mg/L for TSS; 0.75 mg/L for aluminum; 1.0 mg/L for iron; between 3.8-33.2 ug/L for copper; between 0.014-0.262 mg/L for lead; and between 0.04-0.26 mg/L for zinc.<sup>55</sup> The benchmarks in the 2021 MSGP are: 120 mg/L for COD; 100 mg/L for TSS; 1.1 mg/L for aluminum; 1 mg/L for iron; 5.19 ug/L for copper; between 0.014-0.262 mg/L for lead; and between 0.037-0.26 mg/L for zinc.<sup>56</sup>

Following a triggering event, Schnitzer is required to: 1) review and revise the Stormwater Pollution Prevention Plan to minimize pollutant discharges;<sup>57</sup> 2) immediately take “all reasonable steps to minimize or prevent the discharge of pollutants until [it] can implement a permanent solution;”<sup>58</sup> and 3) if necessary, take subsequent actions before the next storm event if possible and within 14 calendar days from the time of discovery.<sup>59</sup>

The 2015 MSGP allowed Schnitzer to fulfill corrective action requirements triggered by benchmark exceedances by making a determination that no further pollutant reductions were technologically available and economically practicable and achievable in light of best industry practice to meet the effluent limits.<sup>60</sup> To take advantage of this provision, Schnitzer was required to continue monitoring once per year, document its rationale for the determination, retain all related records with its Stormwater Pollution Prevention Plan (“SWPPP”), and include in its annual report its rationale for why it believed no further reductions were achievable.<sup>61</sup>

## **B. Schnitzer is required to control discharges to minimize pollutants.**

The MSGPs mandate that Schnitzer control its discharges so as to “minimize pollutants” and lay out detailed requirements for how stormwater discharges should be controlled.<sup>62</sup> Schnitzer must minimize exposure of manufacturing, processing, and material storage areas to rain, snow, snowmelt and runoff;<sup>63</sup> perform good housekeeping measures and keep clean all exposed areas that are potential sources of pollutants;<sup>64</sup> maintain all control measures used to minimize pollutant discharges;<sup>65</sup> minimize the potential for leaks and spills and conduct spill prevention and response measures;<sup>66</sup> minimize erosion and control discharge of sediment;<sup>67</sup> manage

<sup>54</sup> 2015 MSGP § 8.N at 125-130; 2021 MSGP § 8.N at 158-164.

<sup>55</sup> 2015 MSGP § 8.N.6 at 129-130 (the benchmark values for copper, lead, and zinc are variable and set based on the hardness of the receiving water).

<sup>56</sup> 2021 MSGP § 8.N.7 at 163-4 (the benchmark values for lead and zinc are variable and set based on the hardness of the receiving water).

<sup>57</sup> 2015 MSGP § 4.2 at 26; 2021 MSGP § 5.1.1 § 45.

<sup>58</sup> 2015 MSGP § 4.3.1 at 28; 2021 MSGP § 5.1.3.1 at 46.

<sup>59</sup> 2015 MSGP § 4.3.2 at 28; 2021 MSGP § 5.1.3.2 at 46.

<sup>60</sup> 2015 MSGP § 6.2.1.2 at 42.

<sup>61</sup> *Id.*; 2015 MSGP 7.5 at 49.

<sup>62</sup> 2015 MSGP § 2.1 at 14; 2021 MSGP § 2.1 at 18.

<sup>63</sup> 2015 MSGP § 2.1.2.1 at 15; 2021 MSGP § 2.1.2.1 at 20.

<sup>64</sup> 2015 MSGP § 2.1.2.2 at 15-16; 2021 MSGP 2.1.2.2 at 20-21.

<sup>65</sup> 2015 MSGP § 2.1.2.3 at 16-17; 2021 MSGP 2.1.2.3 at 21-22.

<sup>66</sup> 2015 MSGP § 2.1.2.4 at 17; 2021 MSGP 2.1.2.4 at 22-23.

<sup>67</sup> 2015 MSGP § 2.1.2.5 at 17-18; 2021 MSGP 2.1.2.5 at 23.



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stormwater runoff to minimize pollutants in discharges;<sup>68</sup> train employees in the requirements of the MSGP, including stormwater control measures;<sup>69</sup> and minimize dust generation.<sup>70</sup>

To ensure that Schnitzer's discharges are adequately controlled, Schnitzer is required to conduct routine facility inspections at least quarterly.<sup>71</sup> During facility inspections, Schnitzer must observe the above stormwater control measures to ensure they are functioning correctly.<sup>72</sup>

**C. Schnitzer is required to control discharges so as not to violate state water quality standards.**

Under both MSGP Permits, Schnitzer is required to control its stormwater discharges so as "to meet applicable water quality standards of all affected states."<sup>73</sup>

Massachusetts' applicable state water quality standards for Class B waters (such as the Mystic and Blackstone Rivers) include prohibitions on conditions that would impair any use of the water, be aesthetically objectionable, and/or harm aquatic life, such as floating, suspended and settleable solids; color and turbidity; oil, grease, and petrochemicals that produce visible film; and taste and odor.<sup>74</sup> Massachusetts also has state water quality standards for all surface waters relating to aesthetics, including prohibiting debris, objectionable odor, color, taste or turbidity;<sup>75</sup> pollutants that adversely affect the bottom of the waterbody;<sup>76</sup> and toxic concentrations or combinations of pollutants.<sup>77</sup> For all waterbodies, "existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected."<sup>78</sup>

Rhode Island's state water quality standards require all waters to be free from concentrations or combinations of pollutants that harm fish and wildlife, the integrity of the aquatic habitat, or human health.<sup>79</sup> The standards provide that waters shall be free from concentrations or combinations of pollutants that create a nuisance or interfere with designated uses by: forming deposits; or floating as debris, oil, grease, or scum; producing odor or taste or color change.<sup>80</sup> Rhode Island provides further protections relating to sludge deposits, solids, oil, grease, scum, color, turbidity, taste, odor, and chemical constituents for Class B waters.<sup>81</sup>

New Hampshire's state water quality standards require all surface waters to be free from substances that settle to form harmful benthic deposits; float as foam, debris, or scum; produce

<sup>68</sup> 2015 MSGP § 2.1.2.6 at 18; 2021 MSGP 2.1.2.6 at 23.

<sup>69</sup> 2015 MSGP § 2.1.2.8 at 18-19; 2021 MSGP 2.1.2.8 at 23-24.

<sup>70</sup> 2015 MSGP § 2.1.2.10 at 19; 2021 MSGP 2.1.2.10 at 24.

<sup>71</sup> 2015 MSGP § 3.1 at 22-26; 2021 MSGP § 3.1 at 27-29.

<sup>72</sup> *Id.*

<sup>73</sup> 2015 MSGP § 2.2.1 at 20; 2021 MSGP § 3.3.1 at 25 (discharge must be controlled as necessary to meet applicable water quality standards of all affected states).

<sup>74</sup> 314 CMR 4.05(3)(b)(5), (6), (7), (8).

<sup>75</sup> 314 CMR 4.05(5)(a).

<sup>76</sup> 314 CMR 4.05(5)(b).

<sup>77</sup> 314 CMR 4.05(5)(e).

<sup>78</sup> 314 CMR 4.04(1).

<sup>79</sup> 250-RICR-150-05-10.B.1.

<sup>80</sup> 250-RICR-150-05-10.B.2.

<sup>81</sup> 250-RICR-150-05-10.D.1.

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unnatural odor, color, taste, or turbidity; or interfere with recreational activities.<sup>82</sup> Class B waters also enjoy protections against unnatural and detrimental benthic deposits, oil and grease, color, turbidity, slicks, odors, and floating solids.<sup>83</sup> New Hampshire surface waters shall support healthy and diverse aquatic communities and be free from harmful concentrations of toxic substances.<sup>84</sup>

Puerto Rico's water quality standards require all waters to meet aesthetic requirements and not contain floating unsightly or deleterious debris or scum; color, odor, taste, and turbidity; suspended, colloidal, or settleable solids; oil and grease; and toxic concentrations of substances.<sup>85</sup> Class SB waters are protected from unnatural color and turbidity, undesirable taste or odor, and surfactants.<sup>86</sup> Class SD waters are protected from unnatural color, turbidity, solids, and surfactants above certain thresholds, as well as from taste or odor producing substances.<sup>87</sup> Puerto Rico's water quality standards further prohibit the pollution or alteration of the chemical, physical, or biological characteristics of its waters.<sup>88</sup>

**D. Schnitzer is required to comply with the MSGP's monitoring and reporting requirements.**

The MSGPs require Schnitzer to collect and analyze a stormwater sample at least once per quarter.<sup>89</sup> In the event that adverse weather conditions prevent the collection of a required quarterly stormwater sample, Schnitzer is required "to take a substitute sample during the next qualifying storm event."<sup>90</sup> As Schnitzer's activities fall under subsector N, Schnitzer is required to conduct benchmark monitoring for aluminum, copper, iron, lead, zinc, COD, and TSS on its quarterly stormwater samples.<sup>91</sup>

Where Schnitzer discharges into impaired receiving waters that lack a TMDL, the company is required to annually monitor for all pollutants for which the receiving waterbody is impaired.<sup>92</sup> These additional pollutant criteria for which Schnitzer is required to monitor vary by facility depending on the receiving water but include: biological oxygen demand ("BOD"), cadmium, fecal coliform, enterococci, mercury, dissolved oxygen saturation, phosphorus, polychlorinated biphenyls, and E. coli.

Schnitzer is required to submit its monitoring data to EPA.<sup>93</sup>

<sup>82</sup> N.H. CODE ADMIN. R. Env-Wq 1703.03(c)(1).

<sup>83</sup> N.H. CODE ADMIN. R. Env-Wq 1703.08(b), 1703.09(b), 1703.10(b), 1703.11(b), 1703.12(b).

<sup>84</sup> N.H. CODE ADMIN. R. Env-Wq 1703.19(a), 1703.21(a).

<sup>85</sup> P.R. WQS REG. 9079 <https://www.epa.gov/sites/default/files/2014-12/documents/prwqs.pdf>.

<sup>86</sup> P.R. WQS REG. 9079 §1303.2.B.

<sup>87</sup> P.R. WQS REG. 9079 §1303.2.C.

<sup>88</sup> P.R. WQS REG. 9079 §1306.1.A.

<sup>89</sup> 2015 MSGP § 6, 6.1.3, 6.1.7 at 39-40; 2021 MSGP § 4, 4.1.3, 4.1.7 at 31-33.

<sup>90</sup> 2015 MSGP § 6.1.5 at 39-40 ("Adverse weather does not exempt you from having to file a benchmark monitoring report in accordance with your sampling schedule."); 2021 MSGP § 4.1.5 at 33.

<sup>91</sup> 2015 MSGP § 6.2 at 40-41, § 8.N.7 at 163; 2021 MSGP § 4.2 at 33-35, § 8.N at 158-164.

<sup>92</sup> 2015 MSGP § 6.2.4.1 at 45; 2021 MSGP § 4.2.5.1 at 42.

<sup>93</sup> 2015 MSGP § 6.1.9 at 40; 2021 MSGP § 4.1.9 at 33.

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**ACTIVITIES ALLEGED TO BE VIOLATIONS**

Schnitzer collects and/or processes raw scrap metal, including salvaged vehicles, rail cars, home appliances, industrial machinery, manufacturing scrap, and construction and demolition scrap at the Facilities. Schnitzer receives unprocessed scrap metal at the Facilities, which it stores in uncovered piles on-site. Schnitzer's processing activities include crushing, torching, shearing, shredding, separating, sorting, and/or baling. Processed metal is stored at the Facilities in uncovered bales.

Processed and unprocessed scrap metal, machinery, equipment, and vehicles are exposed to precipitation and snowmelt at the Facilities. Precipitation falls on and flows over the scrap metal piles, machinery, equipment, and vehicles, picking up heavy metals, dust and solids, organic contaminants including fuel and oil, trash, and other pollutants associated with the Facility's operations. The polluted runoff is then conveyed off-site into waters of the United States.

The Facilities are generating and conveying pollutants from and through at least the following point sources: unprocessed scrap metal, including vehicles, appliances, machinery, and other scrap; bales of processed scrap metal; machines and equipment left outdoors; vehicles driving on and off the Facilities; and channels, ditches, discrete fissures, containers, and other conveyances to waters of the United States.<sup>94</sup>

Under the Clean Water Act, Schnitzer is prohibited from discharging pollutants to the waters of the United States except in accordance with its MSGP Permits.<sup>95</sup> Schnitzer's industrial activity at the Facilities have caused and continue to cause a "discharge of pollutants" within the meaning of 33 U.S.C. § 1362(12) and "stormwater discharge associated with industrial activity" within the meaning of 40 C.F.R. § 122.26(b)(14), on at least each and every day that there has been a measurable precipitation event of above 0.1 inches.<sup>96</sup> There have been hundreds of such precipitation events since 2016. The Facilities' Permit violations, as described below, are violations of Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a).

The allegations in this Notice Letter are based on documents obtained by CLF through public records requests and publicly available information. If CLF obtains evidence of additional CWA violations at the Facilities, CLF will incorporate those violations into its Complaint. CLF hereby provides notice to Schnitzer of all CWA violations of its MSGPs.

**A. Schnitzer has repeatedly failed to take corrective actions as required by the MSGPs following more than 500 triggering events at the Facilities.**

Schnitzer's Facilities have failed to comply with the MSGPs' corrective action and AIM requirements. Upon information and belief, Schnitzer has not made the determination that no

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<sup>94</sup> These discharges constitute "point sources" as defined by 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2.

<sup>95</sup> See 33 U.S.C. § 1311(a).

<sup>96</sup> EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity. See, e.g., 40 C.F.R. § 122.26(c)(i)(E)(6) (using 0.1 inches as the distinguishing threshold of a storm event).

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further pollutant reductions are technologically available and economically practicable and achievable in light of best industry practice at the Facilities.<sup>97</sup>

Schnitzer has triggered corrective action and/or AIM requirements by repeatedly exceeding the four-quarter average pollutant benchmark values for Sector N facilities.<sup>98</sup>

1. At the Attleboro Facility, Schnitzer has triggered its corrective action requirement through qualifying benchmark exceedances 108 times.<sup>99</sup>
2. At the Everett Facility, Schnitzer has triggered its corrective action requirement through qualifying benchmark exceedances 66 times.<sup>100</sup>
3. At the Worcester Facility, Schnitzer has triggered its corrective action requirement through qualifying benchmark exceedances 46 times.<sup>101</sup>
4. At the Manchester Facility, Schnitzer has triggered its corrective action requirement through qualifying benchmark exceedances 82 times.<sup>102</sup>
5. At the Concord-Poplar Facility, Schnitzer has triggered its corrective action requirement through qualifying benchmark exceedances 131 times.<sup>103</sup>
6. At the Concord-Sandquist Facility, Schnitzer has triggered its corrective action requirement through qualifying benchmark exceedances 84 times.<sup>104</sup>
7. At the Bayamón Facility, Schnitzer has triggered its corrective action requirement through qualifying benchmark exceedances 28 times.<sup>105</sup>
8. At the Caguas Facility, Schnitzer has triggered its corrective action requirement through qualifying benchmark exceedances 31 times.<sup>106</sup>
9. At the Canovanas Facility, Schnitzer has triggered its corrective action requirement through qualifying benchmark exceedances 18 times.<sup>107</sup>
10. At the Ponce Facility, Schnitzer has triggered its corrective action requirement through qualifying benchmark exceedances 17 times.<sup>108</sup>

Upon information and belief, Schnitzer has triggered corrective action and/or AIM requirements by finding evidence of stormwater pollution at the Facilities during quarterly visual assessments. Schnitzer has reported discoloration; cloudiness and/or lack of clarity; solid matter, including

<sup>97</sup> 2015 MSGP § 6.2.1.2. at 42; § 7.5 at 49.

<sup>98</sup> 2015 MSGP § 8.N at 125-130; 2021 MSGP § 8.N at 158-164.

<sup>99</sup> See *Detailed Facility Report for Schnitzer Northeast – Attleboro* (110061143926) *supra* note 18.

<sup>100</sup> See *Detailed Facility Report for Schnitzer Northeast* (110043216418) *supra* note 26.

<sup>101</sup> See *Detailed Facility Report for Metals Recycling LLC* (110046471233) *supra* note 21.

<sup>102</sup> See *Detailed Facility Report Schnitzer Northeast Allard Drive Facility* (110064864446) *supra* note 32.

<sup>103</sup> See EPA, *Detailed Facility Report for Schnitzer Northeast Poplar Facility* (110064870304), ECHO <https://echo.epa.gov/detailed-facility-report?fid=110064870304>

<sup>104</sup> See EPA, *Detailed Facility Report for Schnitzer Northeast Sandquist Facility* (110064873196), ECHO <https://echo.epa.gov/detailed-facility-report?fid=110064873196>.

<sup>105</sup> See *Detailed Facility Report for Schnitzer Puerto Rico, Inc. – Bayamon* (110064859719) *supra* note 34.

<sup>106</sup> See *Detailed Facility Report for Schnitzer Puerto Rico, Inc. – Caguas* (110064865506) *supra* note 38.

<sup>107</sup> See *Detailed Facility Report for Schnitzer Puerto Rico, Inc. – Canovanas* (110070110724) *supra* note 43.

<sup>108</sup> See *Detailed Facility Report for Schnitzer Puerto Rico, Inc. – Port Of Ponce Processed Material Staging Area* (110064856115) *supra* note 46.

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floating, suspended, and settled solids; odor, including sulfur odor; and/or oil sheen from 2016 to 2020. Schnitzer will continue to make such observations in annual reports for future years.

Upon information and belief, Schnitzer's routine facility inspections have indicated that its discharges are not adequately controlled.<sup>109</sup> The findings during these inspections triggered corrective action requirements.

**B. Schnitzer has failed to control its discharges to minimize pollutants as required by the MSGPs, as evidenced by its hundreds of benchmark exceedances.**

Schnitzer has failed and continues to fail to adequately control its discharge of pollutants as required by the MSGPs. This failure is evidenced by Schnitzer's repeated observations of pollutants in its stormwater effluent as well as its more than 500 exceedances of the MSGP's benchmark limits for aluminum, copper, iron, lead, zinc, COD, and TSS. Upon information and belief, Schnitzer has violated the MSGPs' dust control provisions at the Everett Facility.

Schnitzer's benchmark exceedances since December 2016 include:

1. At the Attleboro Facility, Schnitzer has exceeded benchmark values 129 times, including discharges of copper 5,857% and 4,268% of the benchmark value.<sup>110</sup>
2. At the Everett Facility, Schnitzer has exceeded benchmark values 49 times, including discharges of copper 15,604% and 8,394% of the benchmark value and discharges of zinc 7,928% of the benchmark value.<sup>111</sup>
3. At the Worcester Facility, Schnitzer has exceeded benchmark values 42 times, including discharges of copper 2,496% and 1,413% of the benchmark value.<sup>112</sup>
4. At the Manchester Facility, Schnitzer has exceeded benchmark values 68 times, including discharges of copper 19,211% and 9,737% of the benchmark value and discharges of zinc 11,500% and 4,250% of the benchmark value.<sup>113</sup>
5. At the Concord-Poplar Facility, Schnitzer has exceeded benchmark values 112 times, including discharges of copper 17,368% and 11,579% of the benchmark value, discharges of lead 9,286% of the benchmark value, and discharges of zinc 7,750% of the benchmark value.<sup>114</sup>
6. At the Concord-Sandquist Facility, Schnitzer has exceeded benchmark values 71 times, including discharges of copper 44,737% and 21,316% of the benchmark value.<sup>115</sup>

<sup>109</sup> 2015 MSGP § 4.1 at 27; 2021 MSGP § 5.1.1 at 45.

<sup>110</sup> See *Detailed Facility Report for Schnitzer Northeast – Attleboro (110061143926)* *supra* note 18.

<sup>111</sup> See *Detailed Facility Report for Schnitzer Northeast (110043216418)* *supra* note 26.

<sup>112</sup> See *Detailed Facility Report for Metals Recycling LLC (110046471233)* *supra* note 21.

<sup>113</sup> See *Detailed Facility Report Schnitzer Northeast Allard Drive Facility (110064864446)* *supra* note 32.

<sup>114</sup> See *Detailed Facility Report for Schnitzer Northeast Poplar Facility (110064870304)* *supra* note 103.

<sup>115</sup> See *Detailed Facility Report for Schnitzer Northeast Sandquist Facility (110064873196)* *supra* note 104.

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7. At the Bayamon Facility, Schnitzer has exceeded benchmark values 26 times, including discharges of copper 1,464% of the benchmark value and discharges of aluminum 731% of the benchmark value.<sup>116</sup>
8. At the Caguas Facility, Schnitzer has exceeded benchmark values 26 times, including discharges of zinc 1,061% of the benchmark value and discharges of copper 1,002% of the benchmark value.<sup>117</sup>
9. At the Canovanas Facility, Schnitzer has exceeded benchmark values 19 times, including discharges of copper 983% and 733% of the benchmark value.<sup>118</sup>
10. At the Ponce Facility, Schnitzer has exceeded benchmark values 15 times, including discharges of copper 1,458% and 771% of the benchmark value.<sup>119</sup>

**C. Schnitzer has failed to control discharges so as not to violate state water quality standards.**

Schnitzer has been discharging and continues to discharge effluent in violation of the state water quality standards of Massachusetts, New Hampshire, and Puerto Rico. Schnitzer's discharge of visible and malodorous pollutants interferes with the ability of the receiving waters to meet water quality standards and fulfill their designated uses. In particular, Schnitzer's discharges contain floating, suspended, and settleable solids; objectionable color, slicks, and turbidity; visible oil and grease; objectionable taste and odor; and high concentrations of toxic pollutants. These discharges impair the designated uses of their receiving water and are harmful to aquatic life and ecosystems.

Schnitzer discharges pollutants to waterbodies that are already overburdened by those same pollutants, thereby contributing to and exacerbating the impairments of their designated uses.<sup>120</sup>

**D. Schnitzer has failed to comply with the MSGPs' monitoring and reporting requirements.**

Schnitzer has failed to comply with the MSGPs' quarterly monitoring requirements for aluminum, copper, iron, lead, zinc, COD, and TSS. Upon information and belief, when Schnitzer failed to monitor as required due to weather, it did not conduct additional stormwater monitoring in the next quarter as required. Schnitzer has also failed to submit discharge monitoring reports to EPA as required.

1. At the Attleboro Facility, Schnitzer failed to monitor and report 15 required benchmark monitoring values and 51 required impairment monitoring values.<sup>121</sup>

<sup>116</sup> See Detailed Facility Report for Schnitzer Puerto Rico, Inc. – Bayamon (110064859719) *supra* note 34.

<sup>117</sup> See Detailed Facility Report for Schnitzer Puerto Rico, Inc. – Caguas (110064865506) *supra* note 38.

<sup>118</sup> See Detailed Facility Report for Schnitzer Puerto Rico, Inc. – Canovanas (110070110724) *supra* note 43.

<sup>119</sup> See Detailed Facility Report for Schnitzer Puerto Rico, Inc. – Port Of Ponce Processed Material Staging Area (110064856115) *supra* note 46.

<sup>120</sup> See *supra* notes 17-48.

<sup>121</sup> See Detailed Facility Report for Schnitzer Northeast – Attleboro (110061143926) *supra* note 18.



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2. At the Everett Facility, Schnitzer failed to monitor and report one required benchmark monitoring value and 34 required impairment monitoring values.<sup>122</sup>
3. At the Worcester Facility, Schnitzer failed to monitor and report 12 required benchmark monitoring values and nine required impairment monitoring values.<sup>123</sup>
4. At the Manchester Facility, Schnitzer failed to monitor and report 42 required benchmark monitoring values and two required impairment monitoring values.<sup>124</sup>
5. At the Concord-Poplar Facility, Schnitzer failed to monitor and report 195 required benchmark monitoring values and three required impairment monitoring values.<sup>125</sup>
6. At the Concord-Sandquist Facility, Schnitzer failed to monitor and report 35 required benchmark monitoring values and four required impairment monitoring values.<sup>126</sup>
7. At the Bayamon Facility, Schnitzer failed to monitor and report 279 required benchmark monitoring values and 84 required impairment monitoring values.<sup>127</sup>
8. At the Caguas Facility, Schnitzer failed to monitor and report 77 required benchmark monitoring values.<sup>128</sup>
9. At the Canovanas Facility, Schnitzer failed to monitor and report 63 required benchmark monitoring values.<sup>129</sup>
10. At the Ponce Facility, Schnitzer failed to monitor and report 45 required measurement values and six required impairment monitoring values.<sup>130</sup>

**DATES OF THE VIOLATIONS**

Each day Schnitzer operated the Facilities while failing to comply with the terms of the MSGPs constitutes a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Schnitzer has not been in compliance with the MSGPs at any of the Facilities at least since December 2016.

These violations are ongoing and continuous, and barring a change in the stormwater management controls at the Facilities and full compliance with the permitting requirements of the Clean Water Act, these violations will continue indefinitely.

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<sup>122</sup> See Detailed Facility Report for Schnitzer Northeast (110043216418) *supra* note 26.

<sup>123</sup> See Detailed Facility Report for Metals Recycling LLC (110046471233) *supra* note 21.

<sup>124</sup> See Detailed Facility Report Schnitzer Northeast Allard Drive Facility (110064864446) *supra* note 32.

<sup>125</sup> See Detailed Facility Report for Schnitzer Northeast Poplar Facility (110064870304) *supra* note 103.

<sup>126</sup> See Detailed Facility Report for Schnitzer Northeast Sandquist Facility (110064873196) *supra* note 104.

<sup>127</sup> See Detailed Facility Report for Schnitzer Puerto Rico, Inc. – Bayamon (110064859719) *supra* note 34.

<sup>128</sup> See Detailed Facility Report for Schnitzer Puerto Rico, Inc. – Caguas (110064865506) *supra* note 38.

<sup>129</sup> See Detailed Facility Report for Schnitzer Puerto Rico, Inc. – Canovanas (110070110724) *supra* note 43.

<sup>130</sup> See Detailed Facility Report for Schnitzer Puerto Rico, Inc. – Port Of Ponce Processed Material Staging Area (110064856115) *supra* note 46.

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**RELIEF REQUESTED**

Schnitzer is liable for the above-described violations. Each separate violation of the Clean Water Act subjects the violator to a penalty of up to \$56,460 per day per violation for all violations occurring after November 2, 2015, where penalties are assessed on or after December 23, 2020, pursuant to sections 309(d) and 505(a) of the CWA, 33 U.S.C. §§ 1319(d), 1365(a); and 40 C.F.R. §§ 19.1–19.4. CLF will seek the full penalties allowed by law.

In addition to civil penalties, CLF will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a), 33 U.S.C. § 1365(a), and such other relief as permitted by law. CLF will seek an order from the Court requiring Schnitzer to correct all identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

Lastly, pursuant to Section 505(d) of the Act, 33 U.S.C. § 1365(d), CLF will seek recovery of costs and fees associated with this matter.

**CONCLUSION**

During the 60-day notice period, CLF is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of further litigation. If you wish to pursue such discussions, please have your attorney contact Heather Govern by January 10, 2022 so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing at the conclusion of the 60 days.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. Govern', with a stylized, flowing script.

Heather A. Govern, Esq.  
Conservation Law Foundation  
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(617) 850-1765

cc:

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CONSERVATION LAW FOUNDATION

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